

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS**

Space Exploration Technologies Corp.,

Plaintiff,

v.

**Carol Bell, in her official capacity as Chief
Administrative Law Judge of the Office of
the Chief Administrative Hearing Officer,
et. al.,**

Defendants.

Civil Action No. 1:23-cv-00137

**DEFENDANTS' CONSENT MOTION FOR EXTENSION OF TIME TO FILE DEFENDANTS' REPLY
BRIEF IN SUPPORT OF DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND RESPONSE TO
PLAINTIFF'S CROSS-MOTION FOR SUMMARY JUDGMENT**

Defendants respectfully request leave to extend their deadline to file a reply brief in support of Defendants' motion for summary judgment ("MSJ") and a response to Plaintiff's cross-MSJ from June 20 to July 11, 2024. Should this request be granted, the Court should also extend Plaintiff's deadline to file a reply brief in support of its cross-MSJ from July 22 to August 30, 2024. Plaintiff consents to this request. As good cause, Defendants offer the following:

1. On September 15, 2023, Plaintiff filed its Complaint, challenging the constitutionality of certain administrative proceedings initiated against it by the Department of Justice, Immigrant and Employee Rights Section, pursuant to 8 U.S.C. § 1324b. Defendant Administrative Law Judge ("ALJ") Carol Bell, within the Office of the Chief Administrative Hearing Officer ("OCAHO"), presides over these proceedings. ECF No. 1.
2. On November 8, 2023, the Court granted Plaintiff's motion for a preliminary injunction, and stayed the ALJ proceedings. ECF No. 28.

3. The operative complaint alleges that OCAHO ALJs' appointments violate the Appointments Clause (Count I); that the ALJs' statutory removal protections violate Article II (Count II); that the ALJ proceedings violate Article III and the Seventh Amendment (Count III and IV); and that a rule promulgated by the Attorney General addressing administrative appellate review of ALJ decisions in § 1324b cases violates the Administrative Procedure Act (Count V). First Amend. Compl. ¶¶ 50-89, ECF No. 31.
4. On January 24, 2024, the Court set a four-brief schedule for summary judgment. ECF Nos. 32, 33, 34. Defendants filed their MSJ on March 22, 2024, and Plaintiff filed its cross-MSJ and opposition to Defendants' MSJ on May 21, 2024. ECF Nos. 35, 36.
5. Defendants' reply brief in support of their MSJ and response to Plaintiffs' cross-MSJ is due on June 20, 2024, and Plaintiff's reply brief is due on July 22, 2024. ECF No. 34.
6. The Supreme Court is expected to issue a decision in *SEC v. Jarkesy*, No. 22-859 (S. Ct. argued Nov. 29, 2023), sometime between now and the end of June 2024. The Supreme Court's decision could potentially impact the ALJ removal, Seventh Amendment, and Article III issues in this case (Counts II, III, and IV).
7. An extension of the last two summary judgment briefing deadlines to July 11 and August 30, 2024—after the Supreme Court decision in *Jarkesy* is expected to be issued—would conserve the parties' and the Court's resources, and facilitate more careful consideration of the constitutional and administrative law issues in this case. With the extension, both parties would be able to file their briefs after having had the opportunity to thoroughly consider the potential impacts of *Jarkesy* on this case and other cases like it. The Government is currently litigating numerous cases involving similar issues across many agencies. It would also avoid the potential need for last-minute extension requests or

supplemental briefing, should *Jarkesy* be issued shortly before Defendants' deadline or after it.

8. In addition, the undersigned has a preliminary injunction hearing in another case on June 10, 2024. The undersigned's co-counsel recently started a detail in another office. The undersigned's supervisor will be out of the office June 15-22, 2024.
9. No prior extensions have been requested of these deadlines. No party would be prejudiced by an extension, as this Court has preliminarily enjoined the underlying ALJ proceeding.
10. Defendants' counsel has conferred with Plaintiff's counsel. Plaintiff consents to this motion.

Accordingly, Defendants respectfully request that the Court extend Defendants' deadline to file a reply brief/response to July 11, 2024. Should this request be granted, the Court should also extend Plaintiff's reply brief deadline to August 30, 2024.

Dated: May 29, 2024

Respectfully submitted,

ALAMDAR S. HAMDANI
United States Attorney

BRIAN M. BOYNTON
Principal Deputy Assistant Attorney General

DANIEL DAVID HU
Chief, Civil Division

CHRISTOPHER HALL
Assistant Director, Federal Programs Branch

/s/ Christopher Pineda
CHRISTOPHER PINEDA
Southern District No. 1055715
Texas Bar No. 24070420
Assistant United States Attorney
Attorney in Charge
600 E. Harrison, Suite 201
Brownsville, TX 78520
Christopher.Pineda@usdoj.gov

/s/ Cynthia Liao
KUNTAL CHOLERA (D.C. Bar No. 1031523)
Trial Attorney, Attorney in Charge
CYNTHIA LIAO (CA Bar No. 301818)
Trial Attorney
U.S. Department of Justice
Civil Division, Federal Programs Branch
1100 L. Street, NW
Washington D.C. 20005
Kuntal.Cholera@usdoj.gov
Telephone: (202) 305-8645
Cynthia.F.Liao@usdoj.gov
Telephone: (202) 531-1325
Fax: (202) 616-8470

Counsel for Defendants

Consent:¹

/s/ Laura Warrick (with permission)

Laura Warrick
Attorney-in-Charge
Texas Bar No. 24079546
Southern District of Texas Bar No. 3437415
AKIN GUMP STRAUSS HAUER & FELD LLP
2300 N. Field Street, Suite 1800
Dallas, TX 75201
Telephone: (214) 969-4770
Facsimile: (214) 969-4343
lwarrick@akingump.com

James E. Tysse (*pro hac vice*)
Of Counsel
D.C. Bar No. 978722
Charles F. Connolly (*pro hac vice*)
Of Counsel
D.C. Bar No. 455969
AKIN GUMP STRAUSS HAUER & FELD LLP
2001 K Street, N.W.
Washington, D.C. 20006
Telephone: (202) 887-4000
Facsimile: (202) 887-4288
jtysse@akingump.com

Counsel to Plaintiff Space Exploration Technologies Corp.

¹ Plaintiff's counsel's signature is included in this unopposed motion, pursuant to the Court's Local Civil Procedure Rule 6.H. (eff. Feb. 8, 2024).